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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re T.B., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. TIMOTHY B., Defendant and Appellant.	G042513 (Super. Ct. No. DP006937) O P I N I O N

Appeal from orders of the Superior Court of Orange County, Douglas Hatchimonji, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

* * *

INTRODUCTION

In January 2009, the juvenile court denied Timothy B.'s (Father) request for a contested postpermanency plan review hearing under Welfare and Institutions Code section 366.3 and found that adequate services had been provided to Father's son, T.B. (All further statutory references are to the Welfare and Institutions Code unless otherwise noted.) In *In re T.B.* (Sept. 21, 2009, G041623) [nonpub. opn.]) (*In re T.B. I*),[1] we rejected Father's argument he was wrongfully denied a contested postpermanency plan review hearing, because he failed to make an offer of proof that T.B.'s best interests would be served by removing T.B. from his long-term foster care placement which had been selected in light of his Down syndrome and related health issues. We also held substantial evidence supported the court's finding that T.B. had received adequate services.

In this appeal, Father challenges the juvenile court's orders summarily denying Father's section 388 petition seeking the return of now 17-year-old T.B. to his care and denying his request for a "fully contested" postpermanency plan review hearing. He also challenges the court's finding at the postpermanency plan review hearing that T.B. had received adequate services.

We affirm. Father failed to make a prima facie showing in support of the section 388 petition to warrant a hearing. The juvenile court did not err by limiting the scope of the testimony and other evidence admitted at the postpermanency plan review hearing, and, even if it had, Father has not addressed how he suffered any resulting prejudice. Substantial evidence supported the court's finding T.B. had received adequate services.

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[1] We take judicial notice of our unpublished decision in *In re T.B. I.* (Evid. Code, § 452, subd. (d)(1); *Deschene v. Pinole Point Steel Co.* (1999) 76 Cal.App.4th 33, 37, fn. 2.)

BACKGROUND

I.

THE JUVENILE COURT SUSTAINED THE ALLEGATIONS OF THE AMENDED DEPENDENCY PETITION, TERMINATED REUNIFICATION SERVICES, AND SELECTED LONG-TERM FOSTER CARE AS THE PERMANENT PLAN FOR T.B.

In August 2002, Father pleaded nolo contendere to the allegations of the amended juvenile dependency petition which alleged T.B. and his sister, R.B., came within the jurisdiction of the juvenile court under section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The amended petition also alleged R.B. came within the court's jurisdiction under section 300, subdivision (a) (serious physical harm).

The amended petition alleged T.B. and R.B. resided with Father; their mother and Father were divorced and did not live together. In June 2002, then nine-year-old T.B. and then 13-year-old R.B. were detained after Father hit R.B., causing her to suffer a broken nose, and failed to obtain medical care for her. Father had previously disciplined R.B. by striking her with a paddle.

The amended petition further alleged R.B. had been previously taken into protective custody in December 1988 "due to substantiated allegations of sexual abuse, neglect and emotional abuse of [her] half-sibling, J[.]W[.]" by Father. R.B. "was determined to be at risk" and was declared a dependent of the juvenile court. She had a permanent plan until June 1994, when her dependency status was terminated.

The juvenile court found the allegations of the amended petition true by a preponderance of the evidence and declared T.B. and R.B. dependent children of the court. R.B.'s dependency case was closed in November 2006 after she had reached the age of majority. No issues regarding R.B's dependency case are raised in this appeal.

In February 2004, the juvenile court terminated reunification services and selected a permanent plan of long-term foster care for T.B. In March 2005, the court found, "the permanent plan of independent living with identification of a caring adult to

serve as a lifelong connection" for T.B. was appropriate and ordered as the permanent plan.

II.

THE JUVENILE COURT DENIED FATHER'S REQUEST FOR A CONTESTED POSTPERMANENCY PLAN REVIEW HEARING AND FOUND, INTER ALIA, T.B. HAD RECEIVED ADEQUATE SERVICES; FATHER APPEALED FROM THE COURT'S ORDER AND WE AFFIRMED.

At the January 2009 postpermanency plan review hearing, the juvenile court admitted into evidence the Orange County Social Services Agency's (SSA) status review report dated September 8, 2008 and addendum reports dated October 30, 2008 and January 8, 2009. SSA's September 8, 2008 status review report stated that then 15-year-old T.B. resided at a South Coast Children's Society group home, "a Level 14 Regional Center Group Home," where he was being provided the structured setting and "1:1 status" he required. The status review report chronicled T.B.'s medical care, specialized developmental and educational services, and mental and emotional status. The report stated Father communicated with T.B. through telephone calls and periodic visits, and further stated Father wished to care for T.B. at his home in Idaho where he lived with his new wife. At the juvenile court's request, SSA researched whether T.B. might be transferred to a group home setting in Idaho, but did not find a group home that could or would accept T.B.

SSA also reported incidents where T.B. "ha[d] acted out scenes of 'Daddy hitting mommy[.']" T.B. took Father's picture and wanted to shred it in a shredding machine. SSA recommended that T.B. continue as a dependent child of the juvenile court, that the court find T.B.'s current placement is appropriate, and that the court conclude T.B. should continue to be placed in long-term foster care.

SSA filed an addendum report dated October 30, 2008. That report stated the house manager at T.B.'s group home reported that Father engaged in some "questionable behavior" during his September 8 monitored visit with T.B. by "plac[ing]

his hand on T[.B.]'s 'butt.'" The social worker reviewed a special incident report stating that on September 9, T.B. got out of bed, pushed a stuffed bear up against a wall, and called it a "bad boy." T.B. also held the bear with one arm at the neck and shook a finger at it. He then threw the bear on the floor. The incident report stated that T.B. "was processed . . . about nice touches and proceeded to give the bear a hug and scratched the bear[']s butt before patting it." The house manager also stated T.B. "ha[d] been physically acting out some aggression in scenarios involving 'daddy hitting mamma,'" which behavior was "new for T[.B.]." She also said that T.B.'s aggression had escalated after his visit with Father and that T.B. had acted out sexually toward the staff, other residents, and his stuffed bear.

R.B. told the social worker that she thought T.B. was referring to Father's abuse of her when he used the term "mamma." T.B. often referred to R.B. as "mama." The October 30, 2008 addendum report further stated, "T[.B.] continues to function well in the care of the staff at the South Coast Children's Society home. T[.B.] appears to be happy and all of his physical, emotional, medical, and educational needs are being met in his current placement. The staff reports that T[.B.] is well liked and well received by the staff and other residents. The undersigned believes the best and most appropriate plan for T[.B.] continues to be Long Term Foster Care."

SSA's addendum report, dated January 8, 2009, provided further information on T.B.'s medial condition and behavioral issues.

At the postpermanency plan review hearing in January 2009, Father's counsel requested that the juvenile court hold a contested hearing to enable Father to cross-examine the social worker regarding statements in SSA's reports suggesting Father had engaged in domestic violence against his wife and inappropriately touched T.B. The juvenile court denied Father's request for a contested hearing on the ground that the court was not considering those portions of SSA's reports as that information was irrelevant to the issues reviewed at the postpermanency plan review hearing. Following the hearing,

the court found, inter alia, that continued supervision of T.B. was necessary; pursuant to section 366.3, T.B. had received adequate services; and there had been substantial compliance with the permanent plan and the case plan.

The court continued the matter for another postpermanency plan review hearing in July 2009. Father appealed from the juvenile court's order on the ground the court erred by denying his request for a contested postpermanency plan review hearing and by finding that adequate services had been provided to T.B.

In *In re T.B. I*, we affirmed the juvenile court's order, stating: "Under section 366.3, subdivision (f), Father was not entitled to a contested postpermanency plan review hearing unless he made an offer of proof showing that removing T.B. from his current placement and returning him to Father's care would serve T.B.'s best interest. Father did not make such an offer of proof. Furthermore, substantial evidence supported the juvenile court's finding T.B. had received adequate services." (*In re T.B. I*, *supra*, G041623.)

III.

SSA'S JUNE 8, 2009 EX PARTE APPLICATION

On June 8, 2009, SSA filed an ex parte application requesting the juvenile court to issue an order "that the child T[.]B[.] be allowed general anesthesia to complete needed medical procedures, intubation as necessary and possible blood transfusions, should [Father] not be available for authorization." The application explained that on May 26, T.B. was admitted to the hospital due to an infection of his lungs. The assigned social worker learned of T.B.'s hospitalization on May 27; she contacted Father that same day and informed him of T.B.'s condition. Father stated he would provide consent for a blood transfusion or ventilator if needed and would give blood if necessary. The social worker told Father to contact the hospital directly for updated information.

On May 28, T.B.'s condition was not improving and he was having difficulty fighting the infection. The social worker telephoned Father and told him T.B.

was not responding to the treatment and the hospital might be contacting him for authorization of various procedures. She asked Father if he planned on traveling to California; Father said he did not.

On June 2, a physician informed the social worker that T.B. required a bronchoscopy, which would require sedation, to determine why he was not improving. The physician told the social worker that he had tried to call Father at two different telephone numbers, but Father had not returned his calls. The social worker told the physician that she would submit an ex parte application the following morning, seeking authorization for such treatment. The physician stated that if he did not reach Father, and the procedure became necessary before the application was filed, he would confer with another physician pursuant to "emergency protocol." That same day, the social worker tried to contact Father using both his home and cell phone numbers but received no answer.

On June 3, the social worker was informed the bronchoscopy had been performed that morning and T.B. would have likely "coded" had it not been performed. Because T.B.'s oxygen levels had dropped during sedation, T.B. needed to be intubated and received a central line. The physician said he had been unsuccessful in contacting Father. The social worker again tried to reach Father using both his home and cell phone numbers; she left a voicemail message apprising Father of the situation and requesting that he contact the hospital to authorize any necessary procedures. The social worker explained, "[i]t is of concern that T[.B.]'s father has not responded concerning contacting the hospital to give authorization for further medical care/procedures" and therefore an order permitting "anesthesia and/or medical care/procedures, should [Father] not respond," was needed.

On June 8, 2009, Father appeared at the ex parte application hearing and agreed to SSA's proposed order authorizing necessary medical treatment if Father was not available, and the court issued the order accordingly.

IV.

SSA'S JUNE 30, 2009 STATUS REVIEW REPORT

SSA filed a status review report on June 30, 2009, in which the social worker recommended that at the next postpermanency plan review hearing scheduled on July 7, the juvenile court should find T.B.'s placement and permanent plan appropriate and compliance with the permanent plan, and the court should schedule another postpermanency plan review hearing.

The report stated T.B.'s placement at the group home "continues to be appropriate" as his "caregivers appear to be committed to providing for [his] challenging needs" and have "exhibited appropriate concern." The caregivers' "efforts to provide [T.B.] with needed medical, emotional, and educational care" has been "to the best of their abilities and resources." They are able to care for T.B.'s daily needs and desires and understand T.B's special needs which have been addressed effectively and efficiently. T.B. was enrolled in a special day class at a public high school where he "is entitled to receive a free and appropriate public education until December of his 22nd birthday year."

The report explained T.B. "requires a highly structured setting that provides a comprehensive behavior modification program. The therapist . . . and staff . . . provide clear and consistent structure for T[.B.] while creating a nurturing and safe environment to facilitate supportive interaction and healthy interpersonal skills." T.B. continued to display disruptive social behavioral and physically aggressive behaviors toward staff, peers, and himself; he caused physical injury to others by biting, spitting, hitting, and kicking. He also exhibited "hostile behaviors," such as throwing objects, swearing, and hitting others, when he is frustrated. T.B. had daily emotional outbursts and engaged in self-injurious behaviors, including hitting his head with a closed fist or against the floor, a wall, or furniture. T.B. has been provided with "one-on-one" services which have

enabled him "to establish trusting relationships" and resulted in his disclosure of his "personal history of endured or witnessed abuse."

Staff members have reported that T.B.'s "maladaptive behaviors" have decreased, he has been able to control his impulsivity, he "displays more confidence in his verbal abilities," and his "socially appropriate skills" have "improved greatly." After completing an evaluation at the University of California Irvine, Medical Center in October 2008, the evaluating team concluded T.B.'s "severe challenging behaviors are likely a variant of Post Traumatic Stress Disorder" in that T.B. "experienced severe trauma in his early childhood and he appears highly anxious and distrustful of others."

The report addressed T.B.'s recent health issues, explaining that T.B. required constant supervision while eating because he suffers a high risk of choking. The group home staff performed the Heimlich maneuver on T.B. several times. The most serious incident occurred in March 2009 when T.B. aspirated a piece of hamburger meat; he was therefore placed on a puree diet. As a result of the aspiration incident, T.B. developed a fungal infection in his lungs which caused his admission to the hospital on May 26, 2009, where he was in critical condition for several days. He was discharged from the hospital on June 14, 2009 and returned to his group home. During his illness, he lost 10 pounds and was "alarmingly thin." T.B.'s one-on-one staff member reported that he had gained back four pounds as of June 19 as she was "literally feeding him constantly."

The report also stated Father continued to reside in Idaho with his wife and communicated with T.B. through telephone calls and periodic monitored visits. T.B. occasionally asked to speak with Father on the telephone. SSA had explored three possible placement options for T.B. in Idaho at Father's request but none of those placements would take T.B. "due to his ongoing incident reports and sexually acting out behavior." The report further stated: "At the current time, there is no group home available to meet T[.B.]'s needs."

T.B.'s one-on-one staff member expressed that she was "a little disturbed" at the conclusion of one of Father's visits because "rather th[a]n giving T[.B.] a hug or a kiss on the cheek, the father put his head on T[.B.]'s stomach facing his feet and began to stroke the inner part of T[.B.]'s leg." The staff member further stated "she felt uncomfortable as she had witnessed T[.B.] 'play out this same action on a doll in play therapy.'" She also stated Father did not pay much attention to T.B. during their visit but instead watched a game on television.

V.

FATHER'S SECTION 388 PETITION

On August 13, 2009, Father filed a petition under section 388 seeking to change the juvenile court's order that the continued supervision of T.B. was necessary and that T.B. continued to require "out of home care." Father asserted the following change of circumstances: "The child has continued to suffer from declining health and has been admitted to the hospital on three occasions over the past 6 months. T[.B.]'s weight has dropped significantly over the past month. [Father] has sought community resources in Idaho which can meet T[.B.]'s needs and is committed to providing daily oversight of his son's care." Father asserted the requested changes would be better for T.B. because "Father is capable, available and willing to provide daily oversight and advocacy for his son in all areas of his life; educational, medical and psychiatric care, something that the Social Services System does not have the resources or time to do. T[.B.] is a special needs child who needs constant oversight and advocacy which father can provide."

In the declaration filed in support of the section 388 petition, Father stated he was asking for "an immediate referral" for an "expedited approval for placement" in his home in Idaho through the Interstate Compact on the Placement of Children, or, in the alternative, a suitable out-of-home placement near his home in Pocatello, Idaho, to enable him to provide "daily oversight" of T.B.'s care. He stated several facilities exist in his

area which provide services for the Down syndrome community, including residential care facilities which can meet T.B.'s needs. Father stated he also wanted a "second, fairer chance" for family reunification services.

In his declaration, Father also asserted he knows how to care for T.B. because he has done so during T.B.'s first 10 years of life; he can feed, bathe, and otherwise provide for T.B.'s needs in the four-bedroom, 3,000-square-foot residence he shares with his wife. Father also stated he is "on disability" and thus available 24 hours per day and seven days per week to care for T.B. He described his multiple church and community services activities, including providing care for an elderly stroke victim. Father stated he has made efforts to find parenting resources through the Down syndrome organization in his community and has participated in "mandtsystem training" which he did not describe. He requested a court order requiring that (1) he be provided information regarding T.B's medical, psychological, and education information "just as if [he] were T[.B.]'s custodial parent"; (2) at least one unmonitored visit; and (3) a complete physical and mental assessment of T.B. by a neutral medical group. Father attached to his declaration a letter from a reverend of a local church, a list of group homes in Idaho, and letters from his brother, his friends, and his wife. The attachments addressed Father's love for T.B., his skills as a caregiver, and/or instances where Father's visits with T.B. were negatively impacted, for example, by T.B. arriving late.

VI.

SSA'S AUGUST 12, 2009 ADDENDUM REPORT

SSA filed an addendum report on August 12, 2009, stating that on July 15, 2009, T.B. had banged his head against a wall and then appeared to calm down before he began to display "unusual behavior" which included wanting to lie down, slurring his speech, exhibiting unbalanced walking, complaining about being thirsty, and displaying slower than normal movements and reactions. T.B. was taken to the hospital, determined to have the flu, and discharged the same day with instructions to get plenty of rest; he felt

better the following day. As of July 30, T.B. had gained additional weight; he refused, however, to eat independently.

The addendum report also stated that on July 21, 2009, the social worker called the director for group homes in Idaho. The director told the social worker that residential options were very limited in Idaho "especially for clients with challenging behaviors." She said that unfortunately, some private group homes initially accept clients to turn a profit but then shortly after admission, begin the process of removal. She identified one group home as a good facility but that facility had already informed SSA that it was unable to serve T.B.

The report further stated T.B. "has been a resident at the Caladium Group Home since February 2, 2005. Since this time the direct care staff and numerous support staff have been providing excellent medical, physical and emotional care for the child T[.B.]. During his hospitalizations T[.B.] received ongoing visitation and personal care from his staff. T[.B.] looks to these staff as extended family and refers to Caladium House as his home."

VII.

FATHER'S SUPPLEMENTAL DECLARATION TO HIS SECTION 388 PETITION

On August 13, 2009, Father filed a supplemental declaration to his section 388 petition, which reiterated the requests contained in his original declaration. He also asserted that he never received any telephone calls regarding T.B. during his hospitalization in May 2009. Father attached a letter dated over three years earlier in March 2006 from a group home in Idaho, which stated the home required information before it could consider admitting T.B. and the required information was not provided by the social worker. He attached a letter from the wife of the elderly stroke victim for whom Father provided care, which described, inter alia, Father's and his wife's community service, participation in a local church, and love for T.B.

VIII.

THE JUVENILE COURT SUMMARILY DENIED THE SECTION 388 PETITION, PERMITTED A CONTESTED POSTPERMANENCY PLAN REVIEW HEARING WITH LIMITATIONS, AND FOUND T.B. HAD RECEIVED ADEQUATE SERVICES; FATHER APPEALED.

After hearing argument, in August 2009, the juvenile court summarily denied Father's section 388 petition on the ground he had not made a prima facie showing. The court stated it would conduct a contested postpermanency plan review hearing, but it would not admit into evidence certain letters attached to Father's declaration. The court also limited testimony to that provided by Father and the social worker. The court denied Father's counsel's request that Father be recalled for rebuttal testimony following the social worker's testimony.

Following the hearing, the juvenile court found, pursuant to section 366.3, by a preponderance of the evidence, that the services provided to T.B. had been adequate, and that there had been substantial compliance with the permanent plan and with the case plan. The court's minute order stated, "[i]n making this finding, court also considered testimony and demeanor of father." The court found T.B.'s placement "necessary and appropriate." The court denied Father's request for unmonitored visitation but granted his request "for current psychological assessment, social medical assessment, functional assessment and medical evaluation."

Father appealed.

DISCUSSION

I.

THE JUVENILE COURT DID NOT ABUSE ITS DISCRETION BY SUMMARILY DENYING FATHER'S SECTION 388 PETITION.

Father contends the juvenile court erred by summarily denying his section 388 petition. For the reasons discussed *post*, we conclude the juvenile court did not abuse its discretion.

To succeed on a section 388 petition, a parent must show changed circumstances establishing that the proposed modification would be in the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.) "The parent seeking modification [through a section 388 petition] must 'make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]' [Citations.] There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

In determining whether a section 388 petition addresses the best interests of the child, the following factors should be considered: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F., supra,* 56 Cal.App.4th at p. 532.) The strength of the relative bonds between the dependent children to both parent and caretakers becomes an even more important factor when a section 388 petition is filed after reunification services have been terminated. In *In re Stephanie M.* (1994) 7 Cal.4th 295, 317, the California Supreme Court stated, "[a]fter the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best

interests of the child." We apply the abuse of discretion standard in our review of the juvenile court's decision to deny the section 388 petition without a hearing. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

Here, the juvenile court summarily denied Father's section 388 petition on the ground there was not a sufficient showing of changed circumstances or that T.B.'s best interests would be served by the requested relief.

Father failed to make a prima facie showing that the best interests of T.B., who, as the court described, is a "very medically fragile child both from a physical standpoint as well as a psychological, emotional and developmental standpoint," would be served by removing him from the caregivers at the group home where he has resided since February 2005 and received extensive care. Father presented woefully insufficient evidence to show he was in a position to provide the same, much less a higher, quality of care to T.B. than what he has been receiving in the group home.

Father's petition completely failed to address the relative strength of T.B.'s bonds to Father and his caregivers at the group home. Although Father produced evidence of his love for and desire to care for T.B., the section 388 petition did not address the point that T.B. considers his caregivers at the group home as his extended family. His contacts with Father, since the previous postpermanency plan review hearing, have consisted of monitored visits and occasional phone calls.

As for Father's request that T.B. be transferred to an appropriate residential facility in Idaho, Father failed to show a change of circumstances in that he failed to identify an appropriate facility that was willing and able to accept T.B. As pointed out by the juvenile court, it is premature to determine whether such a transfer would be in T.B.'s best interests without identifying one or more appropriate facilities willing and able to accept him.

At the prima facie hearing on the section 388 petition, Father argued he is in a "Catch-22" in that a current physical and psychological assessment of T.B. would be

needed before an appropriate facility with a vacancy could be identified. The record shows SSA had previously conducted such an investigation but it was ultimately determined that residential facilities in Idaho, which might have been appropriate for T.B., would not accept him due to his increasingly negative behaviors including sexual acting-out behavior. As discussed *ante*, at the postpermanency plan review hearing, the court ordered that a physical and psychological assessment of T.B. be completed to facilitate further efforts to find a suitable potential placement in a residential facility in Idaho.

Father does not address in his appellate briefs how the juvenile court abused its discretion in summarily denying the section 388 petition as to his request for unmonitored visitation and an order that he receive medical and education information regarding T.B. We therefore conclude the juvenile court did not abuse its discretion by summarily denying Father's section 388 petition.

II.

THE JUVENILE COURT DID NOT ERR BY DENYING FATHER'S REQUEST FOR A CONTESTED HEARING UNDER SECTION 366.3

Father argues the juvenile court violated his constitutional right to due process by denying his request for a contested hearing under section 366.3. For the reasons we explain *post*, we disagree.

As we explained in *In re T.B. I*, postpermanency plan review hearings are governed by section 366.3. Section 366.3, subdivision (d) provides in pertinent part: "If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. . . . The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency."

Under section 366.3., subdivision (f), the parent carries the burden of proof of showing that further efforts at reunification are the best alternative to overcome the presumption that continued care is in the child's best interest. Section 366.3, subdivision (f) provides: "Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents up to a period of six months, and family maintenance services, as needed for an additional six months in order to return the child to a safe home environment."

Here, the juvenile court permitted a contested postpermanency plan review hearing, albeit limited in scope. Father argues: "The juvenile court ruled that the father could only be heard on the limited issue of visitation, and would only permit the father to call two witnesses, himself and the social worker. The juvenile court would not permit the father to examine the minor's group home manager, the minor's one-on-one group home employee, or the minor, even though they were under subpoena. The juvenile court would not review the minor's permanent plan, even though the minor was in serious decline, approaching adulthood, and the father was ready, willing, and able to become a resource for the minor. . . . The juvenile court would not even permit the father to be examined to provide a rebuttal to the testimony of the social worker on the limited issue of visitation. . . . All of these unwarranted truncations of the father's right to be heard were in violation of due process of law." In the opening brief, Father restates the same argument he made in *In re T.B. I* that "[h]earings under section 366.3 to review the permanent plan of long-term foster care may and should be evidentiary and contested where necessary to hear the facts of a case."

In *M.T. v. Superior Court* (2009) 178 Cal.App.4th 1170, 1181, the appellate court rejected the argument that a parent's right to participate in a section 366.3 hearing necessarily affords the parent an absolute right to an evidentiary hearing. The court stated: "It is plainly not the case that a parent may insist upon an evidentiary hearing at every postpermanency review, irrespective of the nature of the parent's objection to the social service agency's recommendations. When the parent has the burden of proof, the right to participate in a section 366.3 hearing is meaningful only if the parent can present sufficient admissible, relevant evidence that bears upon the matter that must be proved. As explained in *Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146-1147 . . . : 'While a parent in a juvenile dependency proceeding has a due process right to a meaningful hearing with the opportunity to present evidence [citation], parents in dependency proceedings "*are not entitled to full confrontation and cross-examination*." [Citation.] Due process requires a balance. [Citation.] The state's strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence [citation], such as when the presentation of the evidence will "necessitate undue consumption of time." [Citation.] *The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court*. [Citations.]'" (*Ibid*., italics added.)

As discussed *ante*, pursuant to section 366.3, subdivision (f), Father had to carry the burden of overcoming the presumption that continued care was in T.B.'s best interest by proving, by a preponderance of the evidence, that a change in placement and further efforts at reunification were in T.B.'s best interest. Hence, Father was required to tender an offer of proof to justify a contested hearing. In his appellate briefs, Father does not address the offer of proof he made as to any witness or piece of evidence that was excluded at the contested postpermanency plan review hearing and does not explain how the juvenile court erred by excluding any such evidence or witness. He simply argues the

court's refusal to admit evidence he proffered constituted error per se. Father's argument is without support.

Furthermore, even if the juvenile court erred by excluding evidence proffered by Father at the contested postpermanency plan review hearing, Father's appellate briefs are devoid of any discussion of how Father was prejudiced. (*M.T. v. Superior Court*, *supra*, 178 Cal.App.4th at pp. 1181-1182 ["Even if we were to conclude that petitioner had a right to a contested hearing, petitioner has not established that he suffered any prejudice requiring us to reverse the juvenile court's decision"].)

We find no error.

III.

SUBSTANTIAL EVIDENCE SUPPORTED THE JUVENILE COURT'S FINDING THAT ADEQUATE SERVICES HAD BEEN PROVIDED TO T.B.

Father contends insufficient evidence supported the juvenile court's finding that T.B. had received adequate services. We disagree.

Substantial evidence showed that T.B. had received excellent medical, physical, and emotional care from the caregivers at his group home. His therapist and the staff of the group home "provide clear and consistent structure for T[.B.] while creating a nurturing and safe environment to facilitate supportive interaction and healthy interpersonal skills."

Although T.B. had suffered serious medical problems in the six-month period before the postpermanency plan review hearing, no evidence showed that those problems were in any way caused by his caregivers, that his caregivers failed to properly respond to those problems, or that he failed to receive the medical attention he required. Indeed, during his periods of hospitalization, T.B. received ongoing visitation and personal care from staff members of his group home. His one-on-one staff member has successfully worked with T.B. to regain the weight he lost during his illness. No evidence was presented that T.B. had not received any needed services.

Father argues T.B. has received inadequate services because "[n]o services were either proposed or provided that would assist the minor in being placed in Idaho or with his father, or to increase the father's contact with the minor, even though the father stood ready, willing, and able to participate in such services." As discussed *ante*, SSA has made efforts to find an appropriate and available group home placement for T.B. in Idaho, but, due to T.B.'s special needs and his negative behaviors, facilities that might have been appropriate have declined to accept him. The evidence before the juvenile court showed there were few facilities in Idaho that could provide the level of care T.B. requires and those facilities have limited availability. In any event, the juvenile court granted Father's request for a current psychological assessment, social medical assessment, functional assessment, and medical evaluation to facilitate further investigation of possible placements for T.B. in Idaho.

We find no error.

DISPOSITION

The orders are affirmed.

FYBEL, J.

WE CONCUR:

SILLS, P. J.

RYLAARSDAM, J.